# New Zealand Employment Relations Authority Decisions



## Arora v Sato (NZ) Limited AA361A/10 (Auckland) [2010] NZERA 775 (29 October 2010)

Last Updated: 18 November 2010

**IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND**

AA 361A/10 5129374

BETWEEN MUKESH ARORA

Applicant

AND SATO (NZ) LIMITED

Respondent

Member of Authority: Yvonne Oldfield

Representatives: Ken Nicolson for Applicant

Jo Douglas for Respondent

Submissions received: 21 September, 14 October from Applicant

4 October from Respondent

Determination: 29 October 2010

**COSTS DETERMINATION OF THE AUTHORITY**

[1] This matter has been the subject of two determinations in the Authority. In the first, dated 23 September 2008, Mr Arora's application for interim reinstatement was declined. In the second, dated 17 August 2010, it was found that the respondent had not justified its termination of Mr Arora's employment as Financial Controller. Remedies were however significantly reduced for contributory conduct. That determination also disposed of a separate claim for unpaid bonus, which was dismissed.

[2] Costs relating to both the interim and substantive proceedings were reserved. The parties have been given an opportunity to discuss costs but have been unable to agree. I now determine costs in relation to both the interim and substantive matters.

[3] On the basis that costs follow the event, Mr Arora now seeks an order that the respondent make a contribution to his costs. Mr Nicolson told the Authority that Mr Arora's costs were $50,925.00 excluding GST. No invoices were supplied but Mr

Nicolson indicated that this represented 145 hours work (in respect of preparation and appearances) at an hourly rate of $350.00. Mr Nicolson submits that this is a reasonable level of costs, given what he says was the high degree of complexity in the matter. He also says that the time spent is comparable with the level that would be reached if a multiplier of three was applied to the hearing time (five days).

[4] Arguing that the Authority's general "tariff based" approach to costs should not be rigidly applied and that a two thirds contribution is appropriate in the circumstances, Mr Arora now seeks costs of $33,610.00.

[5] For the respondent, Ms Douglas reminded the Authority that the respondent successfully defended the interim reinstatement application and the bonus claim and that the applicant was not wholly successful in his substantive claim either. She also noted that the respondent made an offer to settle (without prejudice save as to costs) in August 2008 well

before either party had incurred substantial costs. Although the offer ($33,500.00) did not match the remedies awarded by the Authority (over $42,000.00) Ms Douglas asserted for the respondent that it was *"a reasonable and not unrealistic offer."*

[6] Ms Douglas also argued that the Authority's investigation was unnecessarily extended by the way in which the applicant's case was conducted. The respondent's costs eventually reached $26,385.19. In support of this argument she provided a detailed breakdown of the process that was followed in the Authority investigation. I record that I have satisfied myself that this document (attached as Appendix A) is accurate.

[7] Ms Douglas argued that in these circumstances the respondent should receive a contribution of $6,000.00 to its costs.

**Determination**

[8] Costs normally follow the event. In this case however, both parties have had a measure of success. Although Mr Arora established that his dismissal was unjustified the respondent was successful in defending the interim reinstatement application and the bonus claim.

[9] The Authority's starting point in setting costs is generally to apply what is often called the "tariff based" approach however as both parties have noted, that approach must not be applied rigidly and the particular circumstances of the case must be taken into consideration. In this case further critical circumstances include the way in which the case was conducted and its relative complexity.

[10] The disorganised way in which the applicant presented information to the Authority is readily apparent from the timeline supplied by Ms Douglas. The Authority was given no satisfactory explanation as to why the applicant's evidence (including witness statements) was not provided (in its entirety) in accordance with the first timetable set in the latter part of 2008. Evidence was provided in a piecemeal fashion over the course of nearly 8 months. To make matters worse, while some of this evidence was of assistance to the investigation, much of it was merely repetitive.

[11] The Authority accepts unreservedly the submission that the investigation was unnecessarily protracted by the way in which the applicant's case was conducted. At several points during the investigation the Authority cautioned Mr Nicolson in particular that timetabling changes delays and overruns with the potential to increase costs for the other party could sound in costs. It should come as no surprise to the parties that these issues are now to be taken into consideration in determining costs.

[12] As for the complexity of the case, it was not significantly different from many other grievance cases brought by senior managers. Properly conducted, I consider that this investigation should have been completed in three days at the most.

[13] After allowing for the fact that both parties have had a measure of success, and for the fact that the applicant's conduct of the case unnecessarily prolonged it, I am satisfied that this is a case in which costs should lie where they fall. I make no order for costs.

Yvonne Oldfield

Member of the Employment Relations Authority

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